

Staff Summary Report



Council Meeting Date: 05/15/08

Agenda Item Number: _____

SUBJECT: This is the introduction and first public hearing to amend Chapter 21 of the Tempe City Code relating to Nuisances and Property Enhancement by amending Section 21-3 relating to Enumerated Violations. The second public hearing is scheduled for June 5, 2008.

DOCUMENT NAME: 20080515cdjk01 TCC CH 21 – NUISANCES (0503-21) Ordinance No. 2008.21

SUPPORTING DOCS: No

COMMENTS: N/A

PREPARED BY: Jan Koehn, Code Enforcement Administrator (350-8076)

REVIEWED BY: Chris Salomone, Community Development Manager (350-8294)

LEGAL REVIEW BY: Dave Park, Assistant City Attorney (350-8907)

FISCAL NOTE: N/A

RECOMMENDATION: Staff recommends adoption of Ordinance No. 2008.21

ADDITIONAL INFO: This code change will be consistent with the practices of other valley cities and allow for enforcement of barking dog violations when extenuating circumstances exist and the required petition is unattainable.

ORDINANCE NO. 2008.21

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF TEMPE, ARIZONA, AMENDING CHAPTER 21, TEMPE
CITY CODE, RELATING TO NUISANCES AND PROPERTY
ENHANCEMENT BY AMENDING SECTION 21-3
RELATING TO ENUMERATED VIOLATIONS.**

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY
OF TEMPE, ARIZONA, as follows:

Section 1. That Section 21-3 of the Tempe City Code is hereby amended to read as follows:

Sec. 21-3. Enumerated violations.

(a) It shall be unlawful and a violation of this code for any person to commit a nuisance or willfully omit to perform any legal duty relating to the removal of a nuisance.

(b) A nuisance includes any one or more of the following conditions:

- (1) Filthy, littered, debris or trash-covered exterior areas, including exterior areas under any roof not enclosed by the walls, doors or windows of any building; including, but not limited to, areas that contain items such as cans, bottles, wood, metal, plastic, rags, boxes, paper, tires, auto parts; unused, inoperable, worn out or discarded appliances or other household items; lumber, scrap iron, tin and other metal not neatly piled, or anything whatsoever that is or may become a hazard to public health and safety, or that may harbor insect, rodent or vermin infestation. This subsection shall not be deemed to include items kept in covered bins or metal receptacles approved by the county health officer or this code or any other ordinance of the city;
- (2) Exterior areas used or maintained as junkyards or dumping grounds, except:
 - a. Any automobile wrecking yard or other junkyard where the same are permitted by the city zoning regulations; or
 - b. The disassembling, repair, rebuilding, storage or keeping of vehicles, machinery or any of the parts thereof on any farm or ranch where such disassembling, repair, rebuilding, storage or keeping are customary and incidental to such farming or ranching activities;
- (3) Any inoperable or unregistered vehicle, or parts thereof, outside of or under a roof area not enclosed by walls, doors or windows of any building on any lot, except the safe and neat keeping of:

- a. Substantially complete inoperable or unregistered vehicles with inflated tires under the roof area of any building;
 - b. A vehicle undergoing repair, titled to the owner or resident of the property, provided that the repair is complete within fourteen (14) days after the repair was begun, provided that not more than three (3) such fourteen (14) day repairs will be permitted in any twelve (12) month period;
 - c. Not more than two (2) ongoing restoration projects or inoperable or unregistered vehicles in a backyard area, screened by a substantially opaque fence at a minimum height of five (5) feet or the height of the vehicles, whichever is more, provided that any fence constructed or modified pursuant to this subsection must meet any and all other requirements of the city code;
 - d. Lawful commercial activities involving vehicles as allowed by the Zoning and Development Code; or
 - e. Operable, off-road vehicles, under the roof area of any building, or in a backyard area, screened by a substantially opaque fence at a minimum height of five (5) feet or the height of the vehicles, whichever is more, provided that any fence constructed or modified pursuant to this subsection must meet any and all other requirements of the city code;
- (4) To leave or permit to remain outside of any single-family or multifamily dwelling or accessory building any camper, vehicle, or part thereof in any portion of the front or side area of the building visible from the street that is not on an improved area designed or intended for such use. An improved area shall:
- a. Be contiguous to, and share an access point with, the required driveway;
 - b. Be no greater than thirty-five percent (35%) of the front and side areas visible from the street;
 - c. Be a minimum of three (3) inches in depth if gravel, crushed rock or other aggregate. If using materials other than asphalt or concrete, an improved surface containing material such as gravel or crushed rock must be contained within a permanent border, imbedded in the ground, delineating the improved area from the remainder of the yard; and
 - d. Be maintained free of all vegetation, including, but not limited to grasses, trees and bushes.
- (5) The storing or leaving of any machinery or equipment designed for or used by contractors or builders for commercial purposes, except where permitted by the city zoning regulations;

- (6) Excessive animal waste that is not securely protected from insects and the elements, or that is kept or handled in violation of this code or any other ordinance of the city or the county; provided, that nothing in this subsection shall be deemed to prohibit the use of such animal waste on any farm or ranch in such a manner and for such purposes as are compatible with customary methods of good husbandry or cultivation;
- (7) Any object, building, tree, bush or vehicle that interferes with, obstructs, tends to obstruct, or renders dangerous the free passage, use or vision in the customary manner of any sidewalk, street or highway in the city;
- (8) Any landscaping, visible from public property, that is substantially dead, damaged, or characterized by uncontrolled growth, or presents a deteriorated or slum-like appearance; uncultivated plants, weeds, tall grass, uncultivated shrubs or growth (whether growing or otherwise) higher than twelve (12) inches; or any dead trees, bushes, shrubs or portions thereof, including stumps; or any palm or similar type tree having dead or dry fronds descending downward from the base of the lowest living frond more than eight (8) feet or dry fronds longer than five (5) feet and closer than eight (8) feet to the ground;
- (9) Any dangerous, deteriorated, abandoned, partially destroyed or unfinished building, addition, appendage or other structure, or any building in violation of the uniform building code as adopted by the city, and any vacated or abandoned building not securely closed at all times; any wood, metal or other material used for securing a vacated or abandoned building must be compatible with the color of the building;
- (10) Any putrid, unsound or unwholesome bones, meat, hides, skins or the whole or any part of any dead animal, butcher's trimmings and offal, or any waste vegetable or animal matter in any quantity, garbage, human excreta, sewage or other offensive substances; provided, that nothing contained in this subsection shall prevent the temporary retention of waste in receptacles in the manner approved by the health officer of the county or this code or any other ordinance of the city;
- (11) The erection, continuance or use of any building, room or other place in the city that, by noxious exhalations, including but not limited to smoke, soot, dust, fumes or other gases, offensive odors or other annoyances, is discomforting or offensive or detrimental to the health of individuals or of the public;
- (12) Burning or disposal of refuse, sawdust or other material in such a manner as to cause or permit ashes, sawdust, soot or cinders to be cast upon the sidewalk, streets, alleys or highways of the city, or to cause or permit the smoke, ashes, soot or gasses arising from such burning to constitute a potential hazard to public health, safety and welfare; provided, that this subsection shall not apply

where the person responsible for the action has properly obtained a fire permit from the city fire department or the county health officer;

- (13) Any unguarded or abandoned excavation, pit, well or hole that may constitute a threat to public health, safety and welfare; or any well, cellar, pit or other excavation of more than two (2) feet in depth, on any unenclosed lot, without substantial curbing, covering or protection;
- (14) To leave or permit to remain exposed outside on any property, or within any unoccupied or abandoned building, dwelling or other structure or in a place accessible to children, any abandoned, unattended or discarded ice box, refrigerator or other container that has an airtight door or lid, snaplock or other locking device that may not be released from the inside, without first removing such door or lid, snaplock or other locking device from such ice box, refrigerator or container;
- (15) Any wall or fence that is missing blocks, boards or other material, or is otherwise deteriorated so as to constitute a hazard to persons or property;
- (16) Any swimming pool areas that are not enclosed as required by chapter 31 of this code; or any swimming pool, architectural pool or spa that creates a health hazard, harbors insect infestation or presents a deteriorated appearance;
- (17) Making, causing or permitting to be made any vibration or artificial illumination of such intensity as to interfere substantially and unnecessarily with the use and enjoyment of public or private property by the public, or as to constitute a hazard or threat to the public health, safety or welfare of the people of the city;
- (18) Willfully or negligently permitting or causing the escape or flow of water into the public right-of-way in such quantity as to cause flooding, to impede vehicular or pedestrian traffic, to create a hazardous condition for such traffic, or to cause damage to the public streets or alleys of the city through the failure or neglect to operate or maintain properly any water facility or device, including, but not limited to, swimming pools, architectural pools, spas, sprinklers, hoses, pipes, ditches, standpipes, berms, valves and gates; or
- (19) The keeping or harboring of any dog or other animal that by frequent or habitual howling, yelping, barking, crowing or the making of other noises, annoys or disturbs a neighborhood or any number of persons; provided, that ~~a complaint~~ **AN ACTION** for a violation of this subsection shall not be initiated, unless ~~there are~~ **A PETITION IS RECEIVED SIGNED BY** at least three (3) ~~written statements from~~ witnesses as to the facts constituting the offense **IN SEPARATE HOUSEHOLDS WITH INDEPENDENT KNOWLEDGE OF THE NUISANCE. THE PETITION REQUIREMENTS MAY BE WAIVED IF THE CIRCUMSTANCES AND EVIDENCE OTHERWISE SUPPORT GROUNDS FOR ENFORCEMENT.**

(c) Nothing in subsections (1) through (5) of this section shall be deemed to apply to safe and neat outdoor accessory storage, use or repair of items customarily associated with the lawful use of such property in the city, screened by a substantially opaque fence at a minimum height of five (5) feet or the height of the storage, use or repair, whichever is more, provided that any fence constructed or modified pursuant to this subsection must meet any and all other requirements of the city code.

Section 2. Pursuant to the Tempe City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this ____ day of _____, 2008.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney